



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/149433

PRELIMINARY RECITALS

Pursuant to a petition filed May 17, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 27, 2013, at West Bend, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely as to both a notice of tax intercept tax issued to collect an overissuance of FoodShare benefits as well as the underlying overpayment and whether Petitioner is liable for the overpayments for which the agency seeks recovery.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Pam Hazley

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County. Petitioner is 28 years of age – DOB 2/13/1985.
2. Petitioner was sent 6 separate Notifications of FS Overissuance, all dated in April and November 2005. Collectively they indicate that Petitioner was liable for overissuances of FoodShare in the amount of \$5534.00. The overpayment covers the period from April 2003 through March 2005. Claim #s [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

3. These overissuances were the result of client error and the reason for Petitioner's liability was that she was alleged to be an adult member of the household. The addresses to which the overpayment notices were sent were addresses of Petitioner's mother in Milwaukee and Waukesha counties.
4. Several dunning notices were sent to Petitioner at the mother's addresses in mid-2005.
5. A State of Wisconsin tax intercept notice, dated September 16, 2005, was sent to Petitioner at Petitioner's mother's address in Waukesha and informed Petitioner that her tax refunds were subject to intercept to repay a \$5534.00 overpayment of FoodShare benefits. It contains appeal instructions and the appeal deadline was noted to be 30 days from the date of the notice.
6. This appeal was filed on May 17, 2013 after a tax refund of Petitioner's was intercepted and she became aware of the circumstances described above.
7. Petitioner and her siblings were removed from their mother's care by the Illinois Department of Health and Family Services as of September 13, 1994. Petitioner lived with relatives and/or was in foster care from that point forward. She was still in Illinois as of August 2004 when she graduated high school.
8. The liability of Petitioner's brother for these same claims has been reversed by the Public Assistance Collection Unit (PACU) as he was living in circumstances similar to that of Petitioner.
9. Petitioner moved to Wisconsin for the first time in 2008.

DISCUSSION

This decision begins with a description of the regulatory framework under which the agency seeks to recover this FoodShare overissuance.

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

Further, all adult members of the household are liable for an overpayment:

All adult [a person who is 18 years old or older] or emancipated minor [A married, widowed or divorced person who is at least 16 years old, a minor who has given birth, a minor emancipated by court order, a minor emancipated by parental consent or a minor living on his or her own who is not supported by parents] food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

FoodShare Eligibility Handbook, Appendix 7.3.1.2; also see 7 C.F.R. §273.18(a)(4).

Once an overpayment is established, *Wis. Stat. § 49.85* provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id. at § 49.85(3)*.

The hearing right is described in *Wis. Stat. § 49.85(4)(b)* but is limited:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing. (Emphasis added).

The time limit for filing an appeal of a tax intercept notice is 30 days. §49.85(3)(a)2, Stats.

As for the underlying overpayment, the Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. *See FoodShare Wisconsin Handbook (FSH)*, §6.4.1 and 7 CFR, §273.15(g).

The question here is whether or not Petitioner's appeal is timely as to the underlying overpayment as well as the tax intercept and, if timely, is Petitioner liable.

The evidence here made clear that Petitioner was removed from her mother's custody and care in September 1994. PACU confirmed that with the State of Illinois. School records make clear that Petitioner was still in high school in Illinois through early August 2004 when she graduated. Though she could have returned to her mother's home at that time there is no evidence of this other than the mother's report to the agencies handling her FoodShare case that Petitioner and the other children were in the household. Clearly that has no credibility given the records concerning Petitioner through August 2004. Conversely, Petitioner herself was a model of credibility and cooperation through the hearing process.

I am, therefore, concluding that Petitioner never received any of the notices here making her appeal timely for the tax intercept notice as well as the underlying overissuance. Further, the evidence demonstrates that Petitioner was not living in the FoodShare household of her mother and is not, therefore liable for the overissuance represented by claim #s [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

CONCLUSIONS OF LAW

1. That Petitioner's appeal is timely as Petitioner was not living at the address to which the overpayment and tax intercept notices were sent.
2. That Petitioner is not liable for the FoodShare overpayment represented by claim #s [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] because she was not living in the home of his mother during the time period involved.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency as well as the Public Assistance Collection Unit with instructions to take the administrative steps necessary to reverse Petitioner's liability for claim #s [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. This must be done within 10 days of the date of this decision.

Any funds taken from Petitioner to recover the overissuances involved here must be returned to Petitioner. This process must be initiated within 10 days of the decision.

That this decision does not in any way reverse the underlying overpayment as to Petitioner's mother or any other liable party.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of September, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 6, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit